STATE OF MICHIGAN

COURT OF APPEALS

PERCEPTRON, INC.,

Plaintiff/Counter-Defendant-Appellee,

v

PHOTON VISION SYSTEMS, INC.,

Defendant/Counter-Plaintiff-Appellant.

UNPUBLISHED
February 20, 2007

No. 261886
Wayne Circuit Court
LC No. 04-409737-CK

Before: Whitbeck, C.J., and Sawyer and Jansen, JJ.

PER CURIAM.

Defendant appeals as of right orders confirming an arbitration award and granting summary disposition in favor of plaintiff. We affirm.

Plaintiff, a Michigan corporation, was granted a default arbitration award in the state of New York against defendant, a New York corporation. The trial court confirmed the arbitration award and entered judgment in plaintiff's favor. Defendant argues on appeal that the arbitration award should be vacated because it was not given notice of plaintiff's intent to arbitrate. We disagree. This Court reviews de novo a trial court's decision on a motion to enforce, vacate, or modify an arbitration award. *Bayati v Bayati*, 264 Mich App 595, 597-598; 691 NW2d 812 (2004).

Before we address the issues presented, we must first address the issue regarding whether Michigan or New York law applies to this case. Defendant cites New York law to argue that the arbitration award should be vacated. However, plaintiff argues Michigan law for its position that the arbitration award should be confirmed. "Michigan courts use a choice-of-law analysis called 'interest analysis' to determine which state's law governs a suit where more than one state's law may be implicated." *Hall v General Motors Corp*, 229 Mich App 580, 585; 582 NW2d 866 (1998).

> "[W]e will apply Michigan law unless a 'rational reason' to do otherwise exists. In determining whether a rational reason to displace Michigan law exists, we undertake a two-step analysis. First, we must determine if any foreign state has an interest in having its law applied. If no state has such an interest, the presumption that Michigan law will apply cannot be overcome. If a foreign state

> does have an interest in having its law applied, we must then determine if Michigan's interests mandate that Michigan law be applied, despite the foreign interests." [*Sutherland v Kennington Truck Service, Ltd*, 454 Mich 274, 286; 562 NW2d 466 (1997).]

We conclude that New York law applies to the issues presented in this case because Michigan's interest is minimal and New York has a significant interest in having its law applied. The only interest Michigan has in this matter is that plaintiff is a Michigan corporation and sought to confirm the arbitration award in this jurisdiction. However, defendant is a New York corporation and most of the events giving rise to the present case took place in New York. The arbitration demand was initiated in New York and the arbitration was conducted in New York. A default judgment was entered against defendant in New York. Moreover, the parties' arbitration agreement had a New York choice-of-law provision. For the reasons stated, we conclude that Michigan's interest in applying its law is minimal, and therefore, New York law applies to the issues presented.

Defendant first argues that the trial court should have vacated the default judgment because it was not given notice that it was a named party to the arbitration proceeding. We disagree. At plaintiff's request, the American Arbitration Association (AAA) served a demand for arbitration against defendant's former CEO, Thomas S. Vogelsong, and defendant's alleged successor in interest, Silicon Video. The arbitration demand was sent to Vogelsong at defendant's address. The AAA sent correspondence to the parties with the date, time, and location of the proposed arbitration proceeding. At some point, Silicon Video was dismissed from plaintiff's arbitration demands. However, the AAA continued to send correspondence to Vogelsong at defendant's address regarding the arbitration. The evidence shows that all correspondence regarding the arbitration was addressed to Vogelsong in his capacity as defendant's CEO. The evidence also shows that defendant and Vogelsong did not reply to any of the AAA's correspondence or appear at the arbitration proceeding, and thus, a default judgment was issued against them.

Although defendant was not specifically named in plaintiff's demand for arbitration, the evidence shows that defendant was served with notice of plaintiff's intent to arbitrate. The New York Supreme Court has found that arbitration can go forward even though a demand for arbitration misidentified a party. *Matter of NRD, Inc* (*Herbert Products, Inc*), 583 NYS2d 347, 349; 153 Misc 2d 968 (1992); *Fashion Envelopes, Inc, v Minsky*, 421 NYS2d 883, 884; 72 AD2d 698 (1979). The New York Supreme Court found in *Fashion Envelopes, Inc*, *supra* at 884, that although a corporation was not formally served with notice of the pending arbitration, it clearly had notice of the other party's intent to arbitrate since the corporate president, who was, in effect, the corporation, did receive formal notice and participated in the arbitration.

In *Herbert Products, Inc*, *supra* at 349, the New York Supreme Court found that the defendant was not misled of the plaintiff's intent to arbitrate even though the plaintiff's demand for arbitration misidentified the corporation. The court found that delivery to a person or entity at the proper address is effective even though the party is not properly identified "if the party has been in fact apprised of the dispute and is not prejudiced by the misidentification or irregularity." *Id.* at 348.

In the present case, defendant had actual notice of plaintiff's intent to arbitrate and defendant admits that it had notice of plaintiff's intent to arbitrate. However, defendant decided not to respond to plaintiff's demands or participate in the arbitration proceeding. Because defendant had actual notice of plaintiff's intent to arbitrate against Vogelsong and Silicon Valley for claims arising under the agreement that it entered into with plaintiff, defendant cannot now argue that it did not have notice of the arbitration. *Lebanon Valley Landscaping, Inc v Town of Nassau*, 596 NYS2d 587; 192 AD2d 902 (1993). For the reasons stated, defendant has failed to show that the arbitration award should be vacated because it was not given notice of the arbitration proceeding.

Defendant also argues that the arbitration award should be vacated because it was obtained through fraud or misconduct. Under New York law, an arbitration award may be vacated if the award was obtained through fraud, misconduct, or corruption. *Bevona v Supervised Cleaning & Maintenance Co*, 554 NYS2d 249, 250; 160 AD2d 605 (1990). New York courts have found that concealment of material evidence justifies setting aside an arbitration award. *Id.* at 249, 250. Defendant argues that plaintiff's failure to disclose that it was not named in any of the arbitration demands, it had no employees or assets, and it had disputed plaintiff's contract claims prior to the commencement of the arbitration renders the arbitration award void. Although defendant argues that there is ample evidence that shows the arbitration award was procured through plaintiff's misconduct, defendant offers no factual evidence to back its claim. In its brief on appeal, defendant admits that it does not "know at this time whether [plaintiff] affirmatively misled the arbitrator." However, defendant argues that plaintiff must have committed misconduct because an award was issued in its favor despite the facts of the case. Because defendant offers no evidence to support its claim, we cannot conclude that plaintiff failed to disclose material evidence during the arbitration. For that reason, defendant's claim is without merit.

Affirmed.

/s/ William C. Whitbeck
/s/ David H. Sawyer
/s/ Kathleen Jansen